

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
GENERAL METALS - VALENTINE, )  
FISHER & TOMLINSON, )  
Appellants, )  
v. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 805

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a \$50 civil penalty for an alleged notice of construction violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 9th day of June, 1975, at Tacoma, Washington; and appellant General Metals appearing through its vice president, Martin Brashem; and appellant Valentine, Fisher & Tomlinson appearing through its manager of environment services division, Wesley D. Snowden, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin

1 and the Board having considered the sworn testimony, exhibits, records and  
2 files herein and having entered on the 16th day of June, 1975, its  
3 proposed Findings of Fact, Conclusions of Law and Order; and the Board  
4 having served said proposed Findings, Conclusions and Order upon all  
5 parties herein by certified mail, return receipt requested and twenty  
6 days having elapsed from said service; and

7 The Board having received no exceptions to said proposed Findings,  
8 Conclusions and Order; and the Board being fully advised in the premises;  
9 now therefore;

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
11 Findings of Fact, Conclusions of Law and Order, dated the 16th day of  
12 June, 1975, and incorporated by this reference herein and attached  
13 hereto as Exhibit A, are adopted and hereby entered as the Board's Final  
14 Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington this 17th day of July, 1975.

16 POLLUTION CONTROL HEARINGS BOARD

17 Chris Smith  
18 CHRIS SMITH, Chairman

19 Walt Woodward  
20 WALT WOODWARD, Member  
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22  
23  
24  
25

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

CERTIFICATION OF MAILING

I, Dolories Osland, certify that I deposited in the United States mail, copies of the foregoing document on the 18<sup>th</sup> day of July, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Martin Brashem  
Vice President  
General Metals of Tacoma, Inc.  
1902 Marine View Drive  
Tacoma, Washington 98422

Mr. Wesley D. Snowden, P.E.  
Manager, Environmental Services  
Valentine, Fisher & Tomlinson  
520 Lloyd Building  
Seattle, Washington 98101

Mr. Keith D. McGoffin  
Burkey, Marsico, Roval, McGoffin,  
Turner and Mason  
P. O. Box 5217  
Tacoma, Washington 98405

Dolores Osland  
DOLORIES OSLAND, Clerk of the  
POLLUTION CONTROL HEARINGS BOARD

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This matter, the appeal of a \$50 civil penalty for an alleged notice of construction violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith, Chairman) at a formal hearing in the Tacoma facility of the State Board of Industrial Insurance Appeals on June 9, 1975.

Appellant General Metals of Tacoma, Inc. was represented by its vice president, Martin Brashem; appellant Valentine, Fisher and Tomlinson, Consulting Engineers (hereafter "Valentine") was represented

EXHIBIT A

by the manager of its environmental services division, Wesley D. Snowden; respondent appeared through Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

From testimony heard and exhibits considered, the Pollution Control Hearings Board makes these

#### FINDINGS OF FACT

##### I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d Ex. Sess., has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

##### II.

Section 6.03 of respondent's Regulation I makes it unlawful to construct, install or establish a new air contaminant source, including "each unit of equipment or control apparatus," unless a "Notice of Construction and Application for Approval" is filed with and approved by respondent. The section specifies that "alterations" are deemed to be construction, installation or establishment of a new air contaminant source. Section 3.29 authorizes a civil penalty of not more than \$250 for any violation of Regulation I.

##### III.

Appellant General Metals installed an automobile "shredder," or fragmentizing device, at its Tacoma, Pierce County, plant in 1966. The device developed some air pollution problems. To help solve these problems, appellant General Metals in 1973 retained the engineering consultant services of appellant Valentine. Appellant General Metals,

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 innovative in its own right from an engineering standpoint, also worked  
2 closely with respondent's officials in an experimental program aimed at  
3 controlling the air pollution problems of the "shredder."

4 IV.

5 On August 30, 1974, appellant General Metals applied to respondent  
6 for a variance from certain air contaminant regulations. The proposal  
7 contained several pages of schematic drawings and formulas, all  
8 principally designed to develop an improved air classification system.  
9 The proposal stated that appellant General Metals felt that a water spray  
10 approach was an "inadequate control method." The proposal did not call  
11 for the use of a scrubber.

12 On October 17, 1974, respondent approved the variance until  
13 October 31, 1975. Conditions of the variance included a statement that  
14 "all precautions" shall be taken to minimize particulate emissions, and  
15 a statement that a Notice of Construction must be submitted for the  
16 proposed control system by January 15, 1975.

17 V.

18 Late in December, 1974, or early in January, 1975, appellant General  
19 Metals, acting independently of appellant Valentine, designed and  
20 installed a scrubber in its Tacoma plant. The scrubber was placed in  
21 use about mid-January.

22 VI.

23 On January 15, 1975, appellant Valentine, acting for appellant General  
24 Metals, filed a Notice of Construction with respondent for an air emission  
25 control system which included a scrubber.

26 On April 14, 1975, respondent conditionally approved the Notice of

27 FINDINGS OF FACT,

CONCLUSIONS OF LAW AND ORDER

Construction application. The approval required a source test and a warning that the device must be shut down if it failed to meet source test standards.

#### VII.

On January 24, 1975, while on a routine visit to the "shredder" plant, an inspector on respondent's staff saw the scrubber in operation. As a result, respondent served appellant General Metals (Notice of Violation No. 10131) and appellant Valentine (Notice of Violation No. 10132) with identical citations for violation of Section 6.03 of respondent's Regulation I. Subsequently, and in connection therewith, respondent issued Notice of Civil Penalty No. 1911 in the sum of \$50, citing both appellants. The penalty is the subject of this appeal.

#### VIII.

Appellant Valentine served only in an advisory capacity to appellant General Metals and did not know of the original decision by General Metals to install and operate the scrubber.

#### IX.

Any Conclusion of Law hereinafter stated which is deemed to be a Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to these

#### CONCLUSIONS OF LAW

##### I.

Appellant Valentine, having no knowledge of appellant General Metals' decision to install and operate the scrubber, should be dismissed from this matter.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

II.

Appellant General Metals pleads that it was an act of "experimentizing" to install the scrubber and cites the condition in its variance to take "all precautions" against particulate emissions. While appellant General Metals is to be commended for its innovative cooperation with respondent to solve the "shredder's" air emission problems, the summary installation of the scrubber cannot be so justified, particularly in view of the fact that the application for the variance appeared to abandon the idea of a scrubber. Appellant General Metals, therefore, was in violation of Section 6.03 of respondent's Regulation I as cited in Notice of Violation No. 10131.

III.

The amount in Notice of Civil Penalty No. 1911, being one-fifth of the maximum allowable sum, is reasonable.

IV.

Any Finding of Fact herein stated which is deemed to be a Conclusion of Law is adopted herewith as same.

Therefore, the Pollution Control Hearings Board issues this

ORDER

Notice of Violation No. 10132 is dismissed as to appellant Valentine. The appeal is denied as to Notice of Violation No. 10131 and appellant General Metals is directed to pay respondent \$50.

FINDINGS OF FACT,  
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DONE at Lacey, Washington this 16th day of June, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith  
CHRIS SMITH, Chairman

Walt Woodward  
WALT WOODWARD, Member

FINDINGS OF FACT,  
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